



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2012**

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**ON THE FOLLOWING MEASURE:**

**H.B. NO. 2174, RELATING TO CAMPAIGN SPENDING.**

**BEFORE THE:**

**HOUSE COMMITTEE ON JUDICIARY**

**DATE:** Thursday, February 2, 2012

**TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Robyn B. Chun, Deputy Attorney General

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Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General supports the intent of this bill and offers the following comments:

Section 2 of this bill amends section 11-332, Hawaii Revised Statutes (HRS), to require an officer of a corporation to file a report with the Campaign Spending Commission for contributions and expenditures from its own treasury that aggregate more than \$1,000 per election period made to, or on behalf of, a candidate, candidate committee or noncandidate committee. This amendment is redundant because pursuant to sections 11-302 and 11-321(g), HRS, corporations are already required to register as noncandidate committees, and therefore are already required to file reports documenting contributions and expenditures if they exceed a \$1000 threshold. Section 2 of the bill is therefore unnecessary and potentially confusing. Accordingly, we recommend deleting section 2 from the bill.

In addition, section 9 of the bill provides that the act shall take effect upon its approval. We recommend that the effective date be changed to the day after the 2012 general election or November 7, 2012, to afford the Campaign Spending Commission the time needed to make internal changes and to minimize any confusion that may be caused to candidates and the electorate by changes to the campaign finance law.

Thank you for the opportunity to testify on this bill.

KRISTIN IZUMI-NITAO  
EXECUTIVE DIRECTOR



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**STATE OF HAWAII**  
**CAMPAIGN SPENDING COMMISSION**  
235 SOUTH BERETANIA STREET, SUITE 300  
HONOLULU, HAWAII 96813

February 1, 2012

TO: The Honorable Gilbert S. C. Keith-Agaran, Chair  
House Committee on Judiciary

The Honorable Karl Rhoads, Vice Chair  
House Committee on Judiciary

Members of the House Committee on Judiciary

FROM: Kristin Izumi-Nitao, Executive Director *KIN*  
Campaign Spending Commission

SUBJECT: **Testimony on H.B. No. 2174, Relating to Campaign Spending**

Thursday, February 2, 2012  
2:00 p.m., Conference Room 325

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission ("Commission") supports the intent of this bill. The Commission, however, has practical concerns about the bill.

Section 1 of the bill requires the Commission to create a "searchable database" for all reports required to be filed with the Commission. "Searchable database" is defined, in part, as one that allows any person on the Commission's website to search any report by any identifying element required in the report and ascertain through a single search the total amount of contributions or expenditures for a person, party, candidate, candidate committee, or noncandidate committee for the applicable reporting period. Pursuant to Section 5 of this bill, the Commission would have to make this searchable database available to the public within 360 days of the effective date of the Act.

The Commission has concerns about its ability to implement these sections of the bill for the 2012 elections. Section 1 of the bill requires significant modifications to the Commission's electronic filing system. Commission staff has discussed this bill with the Information and Communication Services Division ("ICSD") of the Department of Accounting and General Services who developed our electronic filing systems and would be responsible for making the necessary changes to the system that this bill would require. Our discussions with them revealed that an entirely new function or system would need to be developed in order to perform ad hoc queries and reports on data

spanning reporting periods, election periods, and different electronic filing systems. They explained that the candidate, noncandidate, and corporate electronic filing systems were developed as a static reporting system and that this type of functionality was not built in. As such, extensive analysis would need to be performed and requirements gathered to determine what is needed to successfully create this new function or system as well as consideration of procuring additional software tools. ICSD further noted that they would also need to consider the impact of a searchable database on the performance of the existing electronic filing systems, especially during the filing of reports, which may require procuring additional hardware to minimize the load on the existing systems. Based on the aforementioned and in consideration of current resource assignments, ICSD did not believe that they are in a position to successfully complete this project by the end of this election year (i.e., November 2012).

Sections 2 and 3 of the bill require more modest changes to the corporate and noncandidate electronic filing systems, but would still require ICSD to make the adjustments to the respective electronic filing systems.

The Commission respectfully requests that the committee amend this bill's effective date from upon approval to, at the minimum, a date after the 2012 elections.<sup>1</sup>

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<sup>1</sup> We understand that the Attorney General's office has concerns about the effect, if passed, of sections 2 and 6 of the bill on Yamada, et al. v. Weaver, et al., Civil No. 10-00497 JMS/LEK (D. Haw.), a case currently in litigation in which several sections of Hawaii's campaign spending law are being challenged in federal district court. The Commission defers to the Department of the Attorney General in these matters and believes that testimony from the department will be submitted to this committee.



AMERICANS FOR DEMOCRATIC ACTION

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February 1, 2012

TO: Chair Gilbert Keith-Agaran, Vice Chair Karl Rhoads  
Members of the House Committee on Judiciary

FROM: Americans for Democratic Action/Hawaii  
Barbara Polk, Legislative Chair

RE: COMMENTS ON HB 2174 RELATING TO CAMPAIGN SPENDING

HB 2174 is an important step forward in campaign spending disclosure and Americans for Democratic Action/Hawaii is in support of its intent. We are especially supportive of its inclusion of a requirement for an on-line, publicly searchable data base of reports, though we are aware that the Campaign Spending Commission does not have full control over changes in its computerized reporting system.

However, we believe that the deficiencies in our current statute are much broader than those addressed by this bill. The bill provides a method of improving the reporting of corporations and adds needed disclosures to other entities filing reports. However, it does not cover some types of issues that have arisen here and that we are beginning to see on the national level and in other states. For example:

The Supreme Court ruling in Citizens United vs. the FEC opened the possibility for groups in addition to corporations to make independent expenditures on behalf of candidates. Those expenditures are not now covered in our reporting requirements.

The rise of Super-PACs and similar organizations on the state level, provide a method for individuals and groups, including non-candidate committees, to hide their political contributions by funneling them through a Super-PAC or another non-candidate committee. We are not now able to track such transfers.

Our current reporting requirements do not require an organization to reveal who has paid for an electioneering communication unless they have contributed specifically for that purpose. For groups such as the Chamber of Commerce, or the Democratic or Republican Governors Conference, there are rarely contributions earmarked for a specific ad, with the result that no donors are reported.

For these reasons, among others, we urge your committee to consider the broader changes included in HB 2376, perhaps combining that bill with aspects of HB 2174.

Thank you for the opportunity to testify.



**House JUD Committee**  
**Chair Gilbert Keith-Agaran, Vice Chair Karl Rhoads**

**Thursday 2/2/12 at 2:00PM in Room 325**  
**HB 2174 – Campaign Spending**

**TESTIMONY**

**Nikki Love, Executive Director, Common Cause Hawaii**

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Chair Keith-Agaran, Vice Chair Rhoads, and Committee Members:

**Common Cause Hawaii supports HB 2174**, which aims to improve our campaign disclosure laws. **We ask the Committee to also consider passing HB 2376, or combine elements of both bills.**

**BACKGROUND**

HB 2174 and HB 2376 are efforts to improve transparency in the area of independent expenditures in campaigns. This is a particularly timely issue, as *Citizens United v. FEC* and other court decisions paved the way for unlimited spending by corporations and unions to influence elections. New Super PACs and other entities are popping up at the federal and state levels to take advantage of these new pathways for campaign money.

The public's understanding of this issue has grown over the past two years, and the concern about campaign finance is becoming more widespread. This is even leading to a growing movement nationwide for a U.S. Constitutional Amendment to overturn *Citizens United* and rein in campaign spending by corporations. A recent Civil Beat poll showed that an overwhelming majority of Hawaii voters support this idea.

In this context, other states are beefing up their disclosure requirements, and Hawaii is falling behind. According to the National Institute on Money in State Politics, Hawaii has ranked in the bottom half of the nation with respect to disclosure for independent expenditures. These bills include important elements to improve this situation.

**IMPORTANT ELEMENTS IN HB 2174**

We support the many important elements included HB 2174:

- Requires a robust searchable database of all campaign report information.

- Requires corporations to report their independent expenditures as well as their direct contributions to candidates.
- Requires noncandidate committees to report what candidate they are targeting in their advertisements and electioneering communications.
- Authorizes the Campaign Spending Commission to assess fines against “persons”, parties, and candidates
- Directs the Campaign Spending Commission to create rules to require all persons to file electioneering communication reports.

We believe this bill provides many strong improvements to our disclosure laws.

### SUGGESTED ADDITIONS

We ask the Committee to consider additions to address the following:

1. **Definition of Corporation** - The bill improves reporting by corporations, but there is still no definition for “corporation” in the campaign law. We want to ensure that all “persons” other than individuals file a report of their campaign donations and spending.
2. **Noncandidate Committee Reporting** – In Section 3 regarding noncandidate committees, the bill adds to the requirements, “Expenditures for advertisements or electioneering communication shall include the names, if known, of the candidates identified or to be identified” We also suggest adding to the end of that sentence, “and whether or not the candidates are supported or opposed.”
3. **Late Expenditures** – The existing law requires reporting of *late contributions*, to shed light on donations made just before an election. Now that independent expenditures are gaining prominence, we recommend creating *late expenditures* reports for corporations and noncandidate committees as well.
4. **Disclosures on Advertisements** – Advertisements are currently required to include a message regarding who has paid for the ad. But the names of PACs and SuperPACs may not give any real information to the viewers, listeners, or readers. We ask the committee to consider adding a “Stand By Your Ad” provision, which requires advertisements to list their top donors.

HB 2376 includes language that attempts to address these issues.

Mahalo for your attention to this issue, and mahalo for the opportunity to submit testimony.

Testimony for HB2174 on 2/2/2012 2:00:00 PM

## **Testimony for HB2174 on 2/2/2012 2:00:00 PM**

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

**Sent:** Wednesday, February 01, 2012 11:44 AM

**To:** JUDtestimony

**Cc:** fmnhawaii@gmail.com

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Testimony for JUD 2/2/2012 2:00:00 PM HB2174

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Francis Nakamoto

Organization: Individual

E-mail: fmnhawaii@gmail.com

Submitted on: 2/1/2012

### Comments:

The Citizens United decision was a terrible blow to democracy by opening the floodgates to large, anonymous and unfairly influential contributions that give inordinate leverage on elections to the wealthy. HB2174 makes a modest effort to correct a very bad decision at least in Hawaii. We have a long way more to go to reverse Citizens United, but, at least, HB2174 will allow the voters to know who are behind the large expenditures for a particular candidate and decide for themselves whether to accept or reject the messages in each political ad or communication. Please pass HB2174.